STATE OF MICHIGAN

COURT OF APPEALS

HOPE LAND MINERAL CORPORATION, Plaintiff-Appellant,	UNPUBLISHED June 3, 2003
v	No. 234202 Livingston Circuit Court
PANHANDLE EASTERN PIPE LINE COMPANY, Defendant-Appellee.	LC No. 98-016902-CZ

Before: Bandstra, P.J., and Gage and Schuette, JJ.

PER CURIAM.

Plaintiff Hope Land Mineral Corporation appeals as of right the granting of defendant's summary disposition motion. We affirm in part and reverse in part.

I. FACTS

In the mid-1950s, defendant obtained approval from the Federal Energy Regulatory Commission to convert a natural gas production field in Genoa Township to a natural gas storage field. In 1957, defendant entered three lease agreements with the surface owners at that time. In 1962, defendant converted the gas production field to a storage field to store natural gas in a geological formation under the surface of the land, and defendant is still currently storing gas there. The Federal Land Bank of St. Paul foreclosed on the land after the owners defaulted on their mortgages. On November 26, 1984, Peter H. Burgher acquired a portion of the land by limited warranty deed from the Federal Land Bank of St. Paul. Burgher immediately quitclaimed his interest in the land to Hope Land Company. Then on December 18, 1989, Burgher, d/b/a Hope Land Company, quitclaimed the interest to Hope Land Mineral Corporation (HLMC), the plaintiff in this case.

Plaintiff filed a complaint alleging that defendant's leases had been forfeited by operation of MCL 500.281 or, in the alternative, for non-payment of rent. Thus, plaintiff alleged that defendant's continued use of the land for gas storage purposes constituted trespass and unjust enrichment and requested injunctive relief. Defendant moved for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10), arguing in pertinent part that MCL 500.281 does not apply to gas storage rights and that under *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51; 602 NW2d 215 (1999), invasion onto land by an intangible substance such as natural gas is not sufficient to state a claim of trespass. After a hearing on the summary disposition motion, the

trial court held that MCL 500.281 does apply to the leases and that plaintiff may maintain a trespass cause of action.

Defendant moved for rehearing and also filed another motion for summary disposition under MCR 2.116(C)(10), arguing that defendant properly paid rent to plaintiff's agent banks and that equity demanded the leases be upheld. Additionally, defendant argued that the assignment from Burgher, d/b/a Hope Land Company, to plaintiff, HLMC, was ineffective because Burgher did not receive consent for the assignment. The trial court was scheduled to hear both motions together, but the arguments and holding were limited to the issues regarding the assignment clause and payment of rent raised in support of the motion for summary disposition. The trial court granted defendant's motion for summary disposition, and plaintiff then filed its own motion for rehearing. The trial court denied this motion. Plaintiff now appeals.

II. ANTI-ASSIGNMENT CLAUSE

Plaintiff's first issue on appeal is that the trial court erred in granting summary disposition for defendant when it improperly determined that a clause in the contract was an anti-assignment clause. We agree.

A. Standard of Review

A trial court's ruling on a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Graves v American Acceptance Mortgage Corp*, 467 Mich 308, 310; 652 NW2d 221 (2002). Further, the proper interpretation of a contract and whether contract language is ambiguous are questions of law subject to de novo review. *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002); *Farm Bureau Ins Co v Nikkel*, 460 Mich 558, 563; 596 NW2d 915 (1999).

Under MCR 2.116(C)(10), a party may move for dismissal of all or part of a claim based on the assertion that there is no genuine issue of material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. *Universal Underwriters Group v Allstate Ins Co*, 246 Mich App 713, 720; 635 NW2d 52 (2001). When reviewing the motion, the court must consider the affidavits, pleadings, depositions, admissions, and other documentary evidence in the light most favorable to the nonmoving party. *Id.* at 720.

B. Analysis

Generally, contractual language should be construed to adhere to its plain and ordinary meaning. *St Paul v Ingall*, 228 Mich App 101, 107; 577 NW2d 188 (1998). However, a contractual provision is ambiguous if the words "may reasonably be understood in different ways." *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 496; 628 NW2d 491 (2001). The assignment clause in the leases at issue states:

> If the estate of either party hereto is assigned, and the privilege of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to the assigns and their respective successors in title including their assigns, but no change of ownership in the land or in the payments which may be made hereunder shall be binding on Lessee until it has been notified of such change and has been

> furnished with the written transfer or assignment or a true copy thereof certified by the Register of Deeds of the county in which the land described above is located.

In light of the differing interpretations applicable to the clause at issue in this case, there are several general principles of contract law that apply. First, any ambiguity in a contract must be construed most strongly against the drafter. *Stark v Kent Products Inc*, 62 Mich App 546, 548; 233 NW2d 643 (1975). Defendant was the drafter of the leases at issue, and this should have been taken into consideration when interpreting the clause.

Additionally, courts should strive to uphold the freedom of assignability, and those who seek to bar alienation must use the "plainest words" to prohibit assignment. *Detroit Greyhound Employees Fed Credit Union v Aetna Life Ins Co*, 381 Mich 683, 689; 167 NW2d 274 (1969). It is a general rule of contract law that the assignment of rights is allowed unless such assignment is clearly restricted. Calamari & Perillo, Contracts (3d ed), § 18-10, p 735; see generally *Crouse v Michell*, 130 Mich 327, 348; 90 NW 32 (1902); *Weber v Van Blerck Motor Co,* 186 Mich 449, 450; 152 NW 1036 (1915). Further, courts are not inclined to construe provisions of a contract as conditions precedent unless compelled by the language in the contract, *Reed v Citizens Ins Co of America*, 198 Mich App 443, 447; 499 NW2d 22 (1993), and there is nothing in the contract at issue to compel this construction. The trial court's interpretation that the clause was an anti-assignment clause was improper.

III. APPLICATION OF MCL 554.281 AND NONPAYMENT OF RENT

Plaintiff's second issue on appeal is that the trial court erred in denying plaintiff's motion for rehearing and improperly determined that MCL 554.281 does not apply and the leases were not forfeited by operation of that statute. Alternatively, plaintiff argues that the trial court erred in granting summary disposition for defendant when it improperly determined that defendant did not default under the terms of the leases for non-payment of rent. We agree and disagree respectively.

A. Standard of Review

The proper interpretation of a statute is a question of law subject to de novo review. *Putkamer v Transamerica Ins*, 454 Mich 626, 631; 563 NW2d 683 (1997).

B. Analysis

The trial court correctly held that defendant paid the proper party by tendering payment to the bank – plaintiff's agent. Further, plaintiff's president and sole shareholder – who received all rental payments – is plaintiff's fiduciary agent. See *Maxman v Farmers Ins Exchange*, 85 Mich App 115, 126; 270 NW2d 534 (1978); *Goldman v Cohen*, 123 Mich App 224, 229; 333 NW2d 228 (1982). A negotiable instrument is deemed discharged once made to the agent of the holder in good faith, and plaintiff's agent had a duty to deliver the payments to plaintiff. Restatement Agency, 2d, § 427; *Morley v Univ of Detroit*, 269 Mich 216, 220; 256 NW 861

(1934). However, this issue is moot in light of the fact that the trial court erred in its interpretation of MCL 554.281.

MCL 554.281 refers to forfeiture of an entire "oil, gas or mineral lease" not merely the forfeiture of "in interest in oil or gas." By the statute's own terms, forfeiture of "any oil, gas or mineral lease" includes "any interest therein or rights thereunder." MCL 554.3281. In this case, the leases include both rights to the oil and gas and also gas storage rights. The trial court's initial holding that the agreement applies to *all* interests under the lease is the correct interpretation; thus MCL 554.281 does apply to the oil and gas leases at issue, which include gas storage rights.

Additionally, the trial court stated that the statute did not apply because the leases were not broken. The fact that MCL 554.281 includes a provision by which the lessee can dispute whether forfeiture exists demonstrates that the Legislature anticipated, and provided a process for addressing, false or unsupported claims of forfeiture. Therefore, although the terms of the statute anticipate that the lease will be broken before such a claim is brought, it need not in fact *be* broken to exercise the statute's procedures. If the lease is not in fact broken, the lessee can file the proper documents of dispute with the register of deeds. MCL 554.281. Defendant failed to follow the proper procedure as delineated in MCL 554.281; thus, the leases and any interests therein are void.

IV. TRESPASS

Defendant argues as an alternative ground for affirmance that the trial court erred in allowing plaintiff to maintain a cause of action for trespass where the invasion was not by a tangible, physical object. We disagree.

A. Standard of Review

A trial court's ruling on a motion for summary disposition under MCR 2.116(C)(8) is reviewed de novo. *Wodogaza v H&R Terminals*, 161 Mich App 746, 750; 411 NW2d 848 (1987). Under MCR 2.116(C)(8), the legal basis of the complaint is tested by the pleadings alone. *Wodogaza*, *supra* at 750. The motion should be denied unless the claim is so clearly unenforceable as a matter of law that no factual development can possibly justify a right to recover. *Id.*

B. Analysis

In *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 53; 602 NW2d 215 (1999), this Court held that recovery for trespass is only available on proof of an unauthorized direct or immediate intrusion of a physical, tangible object onto land over which the plaintiff has a right to exclusive possession. However, actions for subsurface trespass are recognized at common law. Restatement Torts, 2d, § 159. And although this Court in *Adams* chose not to extend the doctrine of trespass to encompass intangible agents that fall onto land, other jurisdictions have recognized claims of trespass where natural gas has been stored in, or migrated to, the subsurface areas of the plaintiff's land. See *Columbia Gas Transmission Corp v Exclusive Natural Gas Storage Easement*, 747 F Supp 401, 406 (ND Ohio 1990); *Beck v Northern Natural Gas Co*, 170 F3d 1018, 1022 (CA 10, 1999). The fact that the parties executed a lease in the first place

demonstrates that defendant understood that it could not use the subsurface space under plaintiff's land to store its gas without plaintiff's permission. Therefore, the trial court's determination was proper.

We affirm the trial court's decision to allow plaintiff to maintain a cause of action for trespass, and reverse the trial court's order granting summary disposition. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Hilda R. Gage
/s/ Bill Schuette